Supreme Court, U.S.
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No. 98-893

In The

Supreme Court of the United States

October Term, 1998

JOHN ZARUBA, DuPage County Sheriff, in his official capacity,

Petitioner,

v.

JUNE FRANKLIN and KAREN HUFF,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the Seventh Circuit properly affirm the District Court's ruling that under Illinois law county sheriffs are deemed county officers, not state officers, and thus not entitled to Eleventh Amendment immunity?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are the Respondents June Franklin and Karen Huff and the DuPage County Sheriff, in his official capacity. The DuPage County Sheriff's Department is not a party to this proceeding.

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OPINIONS BELOW

The Order and Decision of the District Court denying Petitioner's Motion to Dismiss was entered on November 13, 1997. The opinion of the United States Court of Appeals for the Seventh Circuit affirming the District Court's ruling was entered on July 17, 1998. Both decisions are included in the Appendix to the Petition for Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

The United States Constitution, Amendment XI; Illinois Constitution, Article 5, Section 1; and Illinois Constitution, Article 7, Section 4 are involved.

United States Constitution, Amendment XI

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Illinois Constitution, Article 5, Section 1

> ARTICLE 5. THE EXECUTIVE
>
> SECTION 1. The Officers
>
> The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.

Illinois Constitution, Article 7, Section 4

ARTICLE 7. LOCAL GOVERNMENT

SECTION 4. County Officers

* * *

(c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers shall be elected for terms of fours years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

STATEMENT OF THE CASE

Plaintiffs allege that on March 9, 1998, DuPage County Sheriff's deputy Corporal Dennis Guzlas assisted two individuals known to him to be bounty hunters in the apprehension of Plaintiff June Franklin. (Second Amended Complaint, p. 5, para. 12; p. 6, para. 21-22). Plaintiffs were then removed from the State of Illinois without an extradition hearing.

On the date of this incident, Richard Doria was the DuPage County Sheriff and was originally named as a Defendant, in his official capacity. (Second Amended Complaint, para. 13) After the date of this incident, the citizens of DuPage County elected John Zaruba as DuPage County Sheriff. Therefore, pursuant to federal rule of Appellate Procedure 43(c) Sheriff John Zaruba was substituted for former Sheriff Richard Doria.

Plaintiffs' allegations against the DuPage County Sheriff are that he failed to train and supervise his deputies and have in place policies and procedures to ensure that citizens apprehended by his deputies are safeguarded and processed according to law. Plaintiffs further allege the DuPage County Sheriff failed to have in place policies and procedures to ensure that outside agencies and/or persons who seek to apprehend Illinois citizens do so with proper authority and according to Illinois law. (Second Amended Complaint, para. 67)

Although Plaintiffs originally also named as a defendant the DuPage County Sheriff's Department, the District Court dismissed the DuPage County Sheriff's Department pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). (*See* Minute Order entered August 20, 1997, Appendix 7 to Petition for a Writ of Certiorari). The Order that dismissed the Sheriff's Department was entered before the District Court ruled on the Sheriff's sovereign immunity claim. (*See* Order entered November 13, 1997, Appendix 8 to Petitioner's Writ). In fact, the Sheriff's Department was dismissed before the sovereign immunity issue was fully briefed before the District Court.

REASONS FOR DENYING THE WRIT

Contrary to Petitioner's assertion, the Seventh Circuit did not rule that the DuPage County Sheriff's Department is a properly suable entity. Indeed, that issue was not even before that Court. Moreover, the issue in this case is not whether Sheriff Zaruba acts as an agent for the State of Illinois or for the County of DuPage. Respondents have not brought suit against the State of Illinois or the County of DuPage. Rather, Respondents have brought suit against John Zaruba, in his official capacity as the DuPage County Sheriff.

The issue ruled on by the Seventh Circuit, and the sole issue before this Honorable Court, is whether the DuPage County Sheriff (i.e. – the elected official) is a county officer or a state officer. If the DuPage County Sheriff is deemed a county officer under Illinois law, then he is not entitled to sovereign immunity. *See McMillian v. Monroe County, Alabama*, 520 U.S. 781, 117 S.Ct. 1734 (1997).

Prior to this case, the Seventh Circuit addressed this same issue and held that Sheriffs in Illinois are county officers, and as such generally do not receive sovereign immunity. *Scott v. O'Grady*, 975 F.2d 366, 370-71 (7th Cir. 1992), *cert. denied*, 508 U.S. 942 (1993). The analysis followed by the Seventh Circuit in *Scott v. O'Grady* is the same analysis this Court later applied in *McMillian*. This Court's analysis of this issue in *McMillian* focused first and foremost on the state constitution – "the supreme law of the state," and the interpretation given that constitution by the state supreme court. *Id.* at 1737-38. An examination of the Illinois Constitution and Supreme Court decisions reveals that under Illinois law, county sheriffs

are deemed county officers, not state officers. Therefore, the Seventh Circuit properly denied Petitioner's sovereign immunity claim.

I. THE ILLINOIS CONSTITUTION DESIGNATES COUNTY SHERIFFS AS COUNTY OFFICERS.

The Illinois Constitution provides that county sheriffs are "county officers." Article 7 of the Illinois Constitution addresses local government. Specifically, Article 7, Section 4 provides as follows:

> Section 4. County Officers
>
> * * *
>
> (c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance . . .

Notwithstanding his designation in the Illinois Constitution as a County Officer, Petitioner wants this Court to declare him an Executive Officer. However, the individuals identified as Executive Officers in the Illinois Constitution do not include county sheriffs. Article V of the Illinois Constitution addresses the Executive Branch. Specifically, Article V, Section 1 provides as follows:

> Section 1. The Officers
>
> The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller and Treasurer elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.

The clear import is that the framers of the Illinois Constitution intended county sheriffs to be "county officers" not "state officers."

II. THE ILLINOIS SUPREME COURT HAS LONG HELD THAT COUNTY SHERIFFS ARE COUNTY OFFICERS.

The Illinois Supreme Court has long and consistently held that county sheriffs are county officers, not state officers. *See, e.g., People v. Nellis*, 94 N.E. 165, 169 (Ill. 1911); *Moy v. County of Cook*, 640 N.E.2d 926, 929 (Ill. 1994). In *Moy*, the issue before the Court was whether a county may be held vicariously liable for the conduct of a county sheriff. *Id.* at 927. The Illinois Supreme Court held that a county may not be held vicariously liable for a sheriff's conduct because the "sheriff is a county officer and, as such, is not in an employment relationship" with the county. *Id.* at 931. The *Moy* Court's holding that county sheriffs are included among those persons designated in the Constitution as "county officers" is the holding from *Moy* that is germane to the issue before this Court. Given the clear wording of the Illinois Constitution and the clear pronouncements of the Illinois Supreme Court, the Seventh Circuit properly affirmed the District Court's denial of Petitioner's Motion to Dismiss.

CONCLUSION

Petitioner has offered no compelling reasons for this Court to grant its Petition for Writ of Certiorari. The Seventh Circuit properly analyzed this issue under the framework set forth by this Court in *McMillian*, and ruled in harmony with Illinois law as provided by the Illinois Constitution and the Illinois Supreme Court. Therefore, Respondents, June Franklin and Karen Huff, respectfully request this Honorable Court deny the Petition for Writ of Certiorari submitted by Petitioner, John Zaruba, DuPage County Sheriff.

Respectfully submitted,

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